

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID KUEHN,

Plaintiff,

v.

DR. AMELIA HAYGOOD, CAROL
ROSENBERGER, AND DELOS
INTERNATIONAL, INC.,

Defendants.

CIVIL ACTION No. 05-10574 (RGS)

AFFIDAVIT OF CAROL ROSENBERGER

1. My name is Carol Rosenberger. I am currently the Senior Vice President, Artists and Repertoire, for Delos International, Inc. ("Delos"). Delos is an independent classical music recording company.

2. Delos was incorporated in California in 1973 under the laws of California. Delos has only one office, which is located in Hollywood, California.

3. I reside in Santa Monica, California.

4. I have never lived in Massachusetts.

5. I have traveled to Massachusetts only a few times.

6. Neither Delos nor I have any bank accounts in Massachusetts.

7. Neither Delos nor I own or rent any property in Massachusetts.

8. Delos has no employees in Massachusetts.

9. Delos does not sell or distribute its recordings in Massachusetts. Instead, Delos sells its recordings to the central offices of various retail stores or to one-stop distributors who then sell or distribute Delos recordings in Massachusetts. None of these central offices or

distributors is in Massachusetts. Delos's sales to Tower Records and Virgin, for instance, are handled through Tower Records' and Virgin's main California offices. All invoices to, and payments from, Tower Records and Virgin are also handled from these California offices. Likewise, Delos sells its recordings to Alliance, a one-stop distributor in Florida, who then sells the recordings to national retail chains such as Barnes & Noble.

10. On July 26, 2000, Amelia Stone Haygood and I met David Kuehn in New York City. Mr. Kuehn had formerly worked for BMG Classics, another classical music recording company, in New York City. At this meeting, we discussed the possibility of Mr. Kuehn working with Delos as a consultant to develop new marketing and alternative marketing projects. We also discussed the possibility of Mr. Kuehn performing similar work for the Moscow Chamber Orchestra Cultural Exchange Foundation ("Foundation"), a non-profit corporation based in California. Mr. Kuehn informed us that he had moved to Massachusetts since leaving BMG and was no longer living in New York. However, to allay Delos's concern in having a consultant working from Massachusetts, Mr. Kuehn assured us that he traveled to New York frequently and had many New York contacts. Dr. Haygood and I told Mr. Kuehn that Delos did not have enough money to pay him, but offered to pay him personally until Mr. Kuehn's marketing projects could develop sufficient revenue to enable Delos to pay him or Delos received an anticipated cash infusion. Mr. Kuehn agreed.

11. On December 26, 2000, Mr. Kuehn sent Delos an email outlining his desired compensation terms. Delos agreed.

12. Mr. Kuehn's work for Delos involved providing promotional copies of new Delos releases to classical music radio stations located in states such as Vermont, Virginia, and California. Mr. Kuehn, however, did not provide these recordings to the radio stations himself.

Rather, he would contact Delos. Delos would then provide the recording directly to the radio stations.

13. Mr. Kuehn's work for Delos also involved providing press releases and recordings to various music publications such as Classical CD Review in Maryland; Schwann in Virginia; Opera News in New York; and the San Francisco Examiner in California.

14. Mr. Kuehn's work included forwarding various internet links and online articles, such as reviews, to Delos's office.

15. Although Mr. Kuehn performed some of his work for Delos from his home in Massachusetts, Delos provided Mr. Kuehn with a toll free number so that he could make long distance calls as though he were at the Delos office in California. In addition, Delos provided Mr. Kuehn with a Delos extension so that incoming callers could call Delos's office in California and be transferred to his extension or could call his extension directly.

16. Mr. Kuehn communicated with Delos by telephone and email when he was in Massachusetts.

17. I have not visited Mr. Kuehn in Massachusetts. All of my face-to-face contact with Mr. Kuehn has been outside of Massachusetts, primarily in California.

18. While Mr. Kuehn served as a consultant for Delos, no Delos employees visited Mr. Kuehn in Massachusetts. Instead, Mr. Kuehn would either meet with Delos employees in California or some other state. For example:

- a. On January 10, 2001 through January 13, 2001, Mr. Kuehn met with Dr. Haygood and me in New York to discuss new marketing and alternative marketing strategies.

- b. On February 12, 2001 through February 14, 2001, Mr. Kuehn met with Dr. Haygood and me at a classical music radio convention in Arizona where Mr. Kuehn was to renew his radio contacts.
- c. On May 2, 2001, Mr. Kuehn attended a meeting in Texas with representatives from the Dallas Symphony Orchestra, a Delos recording artist.
- d. On May 3, 2001 through May 7, 2000, Mr. Kuehn attended meetings at Delos's office to discuss new marketing and alternative marketing strategies for Delos and development strategies for the Foundation.
- e. On September 28, 2001, Mr. Kuehn attended a concert in New York at Carnegie Hall by the Moscow Chamber Orchestra, a Delos recording artist, and attended various meetings and a CD signing surrounding the event.
- f. On October 13, 2001, Mr. Kuehn attended a Foundation fundraiser in Santa Barbara, California.
- g. On November 16, 2001, Mr. Kuehn attended a Delos staff meeting at Delos's office.
- h. On January 20, 2002 through January 25, 2002, Mr. Kuehn Delos meetings in Southern France.
- i. On February 13, 2002 through February 18, 2002, Mr. Kuehn a radio conference in San Diego, California with Dr. Haygood, who was a speaker at the conference.
- j. On May 8, 2002 through May 13, 2002, Mr. Kuehn met with Dr. Haygood and me in New York.

- k. On August 3, 2002 through August 8, 2002, Mr. Kuehn attended the Mostly Mozart Festival in New York, where Constantine Orbelian, the conductor of the Moscow Chamber Orchestra, was performing with the Orchestra.
- l. On September 18, 2002, Mr. Kuehn met with Delos employees at Delos's office.
- 19. Mr. Kuehn provided no services to Delos targeted towards Massachusetts.
- 20. From February 3, 2001 until October 28, 2001, Mr. Kuehn was paid by checks mailed to him in Massachusetts from either Dr. Haygood or me in California, or from the Foundation in California.
- 21. Mr. Kuehn's new marketing and alternative marketing projects failed to generate revenue for Delos or development activity for the Foundation.
- 22. The awaited cash infusion never arrived.
- 23. After October 28, 2001, Dr. Haygood, the Foundation, and I stopped paying Mr. Kuehn for his consulting services because financial resources had been exhausted.

Signed under the Pains and Penalties of Perjury this 12th day of May, 2005.

/s/ Carol Rosenberger
Carol Rosenberger